

<p style="text-align: center;"><b>CHAPTER 3</b>  <b>FILING WITH THE COURT:</b>  WHAT IS FILED AND WHEN IS IT OFFICIALLY A  PART OF THE COURT FILE  (INCLUDING PUBLIC ACCESS)  Trial Rule 5(E), (F) and (G)</p>	<p>CONTACT:  <b>Jeffrey Wiese</b>  <a href="mailto:jeffrey.wiese@courts.in.gov">jeffrey.wiese@courts.in.gov</a>  Direct: 317-234-1873  30 S. Meridian St., Suite 500  Indianapolis, IN 46204  Main: 317-232-2542  Fax: 317-233-6586</p>
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Cases are initiated in the trial court clerk's office under [Ind. Trial Rule 3](#) and are assigned case numbers consistent with [Ind. Administrative Rule 8](#). [Ind. Trial Rule 5](#) governs all subsequent documents "filed" with the court. Because the trial court clerk and their staff are custodians of the court files, the trial court clerk needs to know when a document is "filed" under Rule 5.

### **What Documents Shall Be Filed?**

Ind. Trial Rule 5(E) requires that all pleadings and other papers subsequent to the complaint or other initiating document, which are required to be served upon a party, shall be filed with the court. The only exceptions include discovery documents covered by [Ind. Trial Rules 27](#) (deposition before action is commenced), [30](#) (regular depositions), [31](#) (depositions on written questions), [33](#) (interrogatories), [34](#) (requests for production and entry upon land for inspection), and [36](#) (requests for admissions). The excepted documents may need to be filed subsequently, under [Ind. Trial Rule 37](#) or other rules, but they do not need to be filed with the court upon service on the relevant parties.

Depositions may be filed with the court under certain circumstances, delineated by Ind. Trial Rule 5(E), but the litigants are the ones who must comply with those provisions.

Once a document is file stamped, it may not be discarded regardless of error. The only method to correct the error is to file a Motion to Withdraw the document with a corresponding letter. All file stamped documents become the property of the trial court clerk's office. If the error involves an accidental violation of [Ind. Administrative Rule 9](#) regarding confidentiality, the trial court clerk can assist in correcting the violation, as noted below and in the section on Administrative Rule 9.

In the event the receiving trial court clerk sees an error in filing, such as the wrong case number or wrong court, they may reject the filing until it is corrected. It is incumbent upon the person filing the document to make sure it is captioned correctly and treats non-public information properly. In addition, if a county has adopted local rules regarding filings, the trial court clerk shall follow those rules and may reject proposed filings if there is a violation.

Often *pro se* litigants will send correspondence to the court in an effort to make it part of a court record. The court may receive documents that are not served on all required

parties or that do not have the proper captioning information, **but those documents may not be file stamped.** The filing party must certify that the document in its entirety was served on all required parties, pursuant to Ind. Trial Rule 5 before it may be file stamped. The Court will not consider correspondence due to its *ex parte* nature. The [Ind. Code of Judicial Conduct, Rule 2.9](#), generally prohibits a judge from considering a communication made to the judge outside the presence of all parties or not served on all parties.

## **When Is The Document Considered “Filed?”**

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A pleading or other document may be filed by various means, as noted in Ind. Trial Rule 5(F). The most direct method is to present the filing in person to the receiving trial court clerk. The trial court clerk will then file stamp the filing with the current date. **The trial court clerk may NOT backdate a filing made in person.** Likewise, the trial court clerk may not surrender the only copy of the document after the file stamp has been affixed. If the litigant did not provide enough copies for file stamping, the court may return the filing without a stamp.

If the county has approved filings via facsimile under [Ind. Administrative Rule 12](#), the trial court clerk shall accept the duplicate document for filing. If it is transmitted during regular court business hours, it will be file stamped for that day. If it is transmitted after regular business hours, it will be file stamped for the following business day.

If the filing party mails the document via registered, certified or express mail, return receipt requested, the trial court clerk shall file stamp the document for the day indicated by the postmark. If the filing party simply mails the document via a commercial carrier, without sending it registered, certified or express mail, the trial court clerk shall file stamp the document on the day it is received. **The trial court clerk may ONLY backdate a document that was sent via registered, certified or express mail.** Backdating refers only to the date file stamped on the document. The CCS entry should be dated with the date the entry is made and the text of the entry should state the date file stamped on the document.

The filing party may simply mail a filing to the court. The trial court clerk will file stamp the document on the date it was received. The filing party may also, with permission, file the document with the Judge, who will then forward it to the trial court clerk for file stamping with the relevant date.

## **Filing Orders**

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Sometimes the Court enters orders in open court and serves the parties at that time, making the order effective as to the parties immediately. However, based on several rules, the Clerk must make sure the Orders are filed as well, because they are not effective as to the world until the orders are entered into the public record. Ind. Trial Rule 5 requires the service of orders as well as other filings. The parties are served in

court, but [Ind. Trial Rule 72](#)(D) requires the Clerk to note the manner of service (“in open court”) on the Chronological Case Summary (CCS).

If the court enters an order in open court on one day, the court staff file-stamps the order but does not make a CCS entry at all and does not deliver the order to the Clerk until the next day, the use of a “received” stamp by the Clerk is appropriate to show the date that the order is received for entry into the public record. If the Clerk makes a CCS entry on the date she receives it, the order is entered into the public record on that date. If the Clerk does not make the CCS entry on the same day that the order is received by her office, the CCS entry must be dated with the date that she enters it on the CCS, and in the text of the entry she notes the date the order was signed by the Judge and the date received by the Clerk.

## **Confidential Filings**

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Ind. Administrative Rule 9(G) identifies what information is confidential and excluded from public access. The information may still be relevant to the court files and must be “filed” by the trial court clerk. In the event an entire document is deemed confidential under Ind. Administrative Rule 9(G), Ind. Trial Rule 5(G) requires the filing to be presented to the trial court clerk on light green paper. In the event only a portion of the document contains confidential information, then the filing party shall tender a light green sheet with the confidential information provided and a regular paper version with the confidential information redacted.

Both green filings and filings with redactions receive file stamps but the trial court clerk must maintain the confidential “green” filings in a separate place from the public court file. The county may determine the best method for protecting the confidential files but whatever is decided, it is the trial court clerk’s office responsibility for making sure the “green” files are not open to public access.

## **Electronic Filing [see also Chapter 33]**

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[Ind. Administrative Rule 16](#) permits courts to conduct electronic service and/or electronic filing pilot projects upon approval by the Indiana Supreme Court’s Division of State Court Administration. Administrative Rule 16 requires, among other things, the project to provide for file retention protocol, including compliance with [Ind. Administrative Rule 7](#), as well as a method by which confidential information is protected. If a court or courts utilize electronic filing, make sure that you and your office is educated as to record retention under the pilot project and maintenance of the “green” information.

Ind. Administrative Rule 16 requires the court to adopt local rules relating to the pilot project and shall involve the trial court clerk’s office when training staff.

## **Other Filings**

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From time to time, litigants and other agencies will present documents for filing that may require special attention by the trial court clerk. Examples are protection orders, Domestic Relations Counseling Bureau (DRCB) reports, sealed documents, and unsolicited correspondence related to a case.

Protection Orders are covered under Chapter 14 of this manual and it is the trial court clerk's obligation to maintain the security of the confidential portions of protective orders.

Sealed documents are sealed by a court order and must be maintained separate from the public file. Most courts keep the sealed documents with the "green" documents even though they are confidential in accord with [Ind. Code 5-14-3-5.5](#).

Correspondence may be put in a court file but shall not be file stamped unless the filing party provides a certificate of service pursuant to [Ind. Trial Rule 5\(C\)](#).

DRCB reports are not part of the public file for the protection of the parties. They shall be maintained separately from the related domestic relations case.

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